

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5587/2017

(@Petition(s) for Special Leave to Appeal (C) No(s). 8363/2014)

FAROOQ

Appellant(s)

VERSUS

SANDHYA ANTHRAPER KURISHINGAL & ORS.

Respondent(s)

O R D E R

1. Leave granted.

2. The present appeal arises from a suit being OS No.1071 of 2003 filed on 11th December, 2003 by two partners against the remaining partner and an unregistered firm seeking to cancel a sale made on 26th April, 2003 by the defendant partner without the consent of all the partners. A preliminary objection was taken stating that the suit was hit by Section 69 of the Indian Partnership Act, which reads as follows:-

69. Effect of non-registration.-

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right

arising from a contract, but shall not affect-

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

(4) This section shall not apply-

(a) to firms or to partners in firms which have no place of business in the territories to which this Act extends or whose places of business in the said territories, are situated in areas to which, by notification under Section 56, this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

3. The trial court, by a Judgment dated 19th April, 2006, held, on a reading of the plaint as a whole, that the suit was hit by the said Section and, therefore, was not maintainable. The High Court in appeal against the said Judgment reversed the finding of the Trial Court by the impugned judgment dated 8th November, 2013, holding that a reading of the plaint leads to the conclusion that the plaintiffs are actually enforcing their rights as co-owners of the property, and not as partners of a firm and, therefore, the suit would be maintainable.

4. Shri S. Gurukrishna Kumar, learned Senior counsel appearing on behalf of the appellant, pressed into service Section 69 of the Act

after copiously reading the plaint before us. According to him, the plaint, if read as a whole, would show that the suit was only to enforce a right arising from the partnership itself, in that clause 25 (d) of the partnership deed was specifically set out in the plaint. This being the case, according to him, the trial court was correct and the High Court was in error.

5. Shri Subramonium Prasad, learned Senior counsel appearing on behalf of the respondents supported the High Court's Judgment, and in particular, drew our attention to paragraph 18 of the plaint which reads as follows:-

"Although the suit schedule property belongs to M/s. Windsor Wings Developers, the plaintiffs, being partners of the said firm, are co-owners of the same. Hence, the plaintiffs are entitled to file this suit even independently of the partnership firm. The cause of action for filing this suit is common to both the plaintiffs and has arisen in common against all the defendants. The plaintiffs are represented by their respective constituted attorneys in this case. The concerned powers of attorney are produced herewith as Document Nos. 16 and 17."

6. Having heard the learned Senior counsel appearing for the parties, it is clear that the plaint, read as a whole, relied upon clause 25 (d) of the Partnership Deed which specifically states that no partners of the firm shall without the consent in writing of the other partners be entitled to transfer immovable property belonging to the firm. The plaint then goes on to say that the suit schedule property was purchased out of the funds of the firm for the purpose of development and sale. In paragraph 11, the plaintiffs discovered that a sale deed has been executed by the first defendant. It has been specifically stated that the plaintiffs had never consented to the same and the first defendant has no authority to sell any immovable property belonging to the firm. The plaint, read as a whole, leaves no manner of doubt that the basis for the suit is Section 69 of the Partnership Act read with clause 25 (d) of the Partnership Deed dated 29th December,

1995. Paragraph 18 of the plaint does not carry the matter further inasmuch as the only sentence which could possibly be relied upon, and which was relied upon by the High Court, is that the plaintiffs are entitled to file the suit even independently of the partnership firm. Having found that the basis of the suit is the factum of partnership and having relied upon clause 25 (d) of the Partnership Deed, it is clear that the Trial Court correctly found that the bar of Section 69 of the Act was attracted in the facts of this case.

7. Accordingly, we set aside the Judgment of the High Court and restore that of the Trial Court.

8. The appeal is allowed in the above terms.

.....J
(ROHINTON FALI NARIMAN)

.....J
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI;
24TH APRIL, 2017.

ITEM NO.36

COURT NO.13

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 8363/2014

(Arising out of impugned final judgment and order dated 08/11/2013 in RFA No. 1468/2006 passed by the High Court of Karnataka at Bangalore)

FAROOQ

Petitioner(s)

VERSUS

SANDHYA ANTHRAPER KURISHINGAL & ORS.

Respondent(s)

(With interim relief and office report)

Date: 24/04/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s)

Mr. S. Gurukrishna Kumar, Sr. Adv.

Mr. S. Hari Haran, Adv.

Mr. Vikash Singh, AOR

For Respondent(s)

Monisha Handa, Adv.

Mr. Mohit D. Ram, AOR

Mr. Joseph Pookkatt, Adv.

Mr. Prashant Kumar, Adv.

Mr. Dhawesh Pahuja, Adv.

For M/s. Ap & J Chambers, Advts.

Mr. Subramonium Prasad, Sr. Adv.

Mr. Shiv Shankar P., Adv.

Ms. Ranjeeta Rohatgi, AOR

Ms. Samten Doma, Adv.

Mr. Anmol Diwan, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(VISHAL ANAND)

COURT MASTER

(SNEH LATA SHARMA)

COURT MASTER

(Signed Order is placed on the file)

